

## **PUBLIC MEETING MINUTES**

June 11, 2009

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Acting Chair Dowdin Calvillo called the meeting to order at 10:00 a.m.

### **Members Present**

Alice Dowdin Calvillo, Acting Chair  
Sally M. McKeag, Member  
Karen L. Neuwald, Member  
Robin W. Wesley, Member

### **Staff Present**

Tami Bogert, General Counsel  
Les Chisholm, Division Chief, Office of the General Counsel  
Bernard McMonigle, Chief Administrative Law Judge  
Eileen Potter, Chief Administrative Officer

### **Call to Order**

Acting Chair Dowdin Calvillo called the Board to order for a return to the open session of the April 2, 2009 Board meeting.

After establishing that a quorum had been reached for the purposes of today's public meeting, Acting Chair Dowdin Calvillo was saddened to announce that the PERB Chair, Tiffany Rystrom, had recently passed away after her battle with cancer. Acting Chair Dowdin Calvillo stated that Chair Rystrom had strongly supported PERB's mission and the work that the Board and staff accomplished to ensure that PERB acted fairly and judiciously in carrying out its mission. Chair Rystrom was proud to be a Member and took her job at PERB very seriously. This was reflected in her work and decisions. On behalf of the full Board, Acting Chair Dowdin Calvillo stated that PERB was fortunate to have had her as a Member of the Board, and as a leader of this very important agency. Acting Chair Dowdin Calvillo said that unless there was objection, today's meeting would be adjourned in the memory of Tiffany Rystrom. Hearing none, the order was made.

Acting Chair Dowdin Calvillo then moved to items on today's agenda and reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Acting Chair Dowdin Calvillo read into the record the decisions that issued since the open session in April. Those were PERB Decision Nos. 1876a-H, 1945a, 2018-S, 2019, 2020-M, 2021, 2022-M, 2023-M, 2024-S, 2025-M, 2026, 2027-M, 2028, 2029, 2030-M, 2031-M, 2032-H, 2033-M, 2034-S, 2035-M, 2036-M, and 2037-M, and Administrative Appeal No. Ad-378. She stated that PERB's General Counsel would report on three requests for injunctive relief (I.R.) as follows: I.R. No. 568 (*Stationary Engineers Local 39, International Union of Operating Engineers v. State of California (Department of Personnel Administration)*), the request was denied; I.R. No. 569 (*SEIU Local 521 v. County of Monterey*), the request was denied; and I.R. No. 570 (*Los Angeles Unified School District v. United Teachers of Los Angeles, CTA, CFT, NEA, AFT/AFL-CIO*), the request was denied. A document containing a listing of the aforementioned decisions was made available at today's meeting.

Acting Chair Dowdin Calvillo adjourned the April 2, 2009 meeting in the memory of PERB Chair Tiffany Rystrom.

Acting Chair Dowdin Calvillo then opened and called to order the June 11, 2009, public meeting. Member Neuwald led in the Pledge of Allegiance to the Flag.

Before continuing with the Board's agenda, Acting Chair Dowdin Calvillo recognized the presence of Karla Diringer and Trevor Newman at today's meeting. She stated that Ms. Diringer is the Senior Deputy Appointments Secretary in the Governor's Office and contributed to most of the appointments of the current PERB Members of the Board, and Mr. Newman is an Executive Fellow who is working in the Governor's Office this year. Acting Chair Dowdin Calvillo thanked both of them for attending today's meeting.

Acting Chair Dowdin Calvillo then announced an adjustment to today's agenda. Specifically, she asked that the public comment section be moved to the end of the agenda. She asked that this move occur to allow an opportunity for comments and remembrance of PERB's departed Chair Tiffany Rystrom. This change was made, without objection, to the order of the agenda for today's public meeting.

## **Minutes**

**Motion:** Motion by Member McKeag and seconded by Member Neuwald that the Board adopt the minutes of the Public Meeting of PERB for April 2, 2009.

**Ayes:** Dowdin Calvillo, McKeag, Neuwald, and Wesley.

**Motion Adopted.**

## **Staff Reports**

### **a. Administrative Report**

Chief Administrative Officer Eileen Potter stated that, for the first time in her career at PERB, she had nothing to report. She stated that staff in the Administrative Division were working judiciously to conclude all financial matters of PERB for the fiscal year.

b. Legal Report

Ms. Bogert reported that the monthly activity and litigation reports had been distributed to the Board. She highlighted several items in those reports, specifically since the Board's last public meeting in April. With regard to monthly activities, during the months of April and May, 206 new cases were filed with PERB, 165 case investigations were completed, and 49 informal settlement conferences were conducted by staff. Ms. Bogert reported that PERB continues to experience and absorb an increased workload. Specifically, 795 new charges have been filed already this fiscal year compared to 762 filed last year at this time. She reported that during the months of April and May, as noted by Acting Chair Dowdin Calvillo, three requests for injunctive relief were considered and ultimately denied by the Board.

Ms. Bogert next reported on two litigation matters. In the first matter, Ms. Bogert reported that a new case had been initiated by the California Faculty Association, regarding PERB Decision No. 1876a-H. This action is in the Third District Court of Appeal and Ms. Bogert stated that she would keep the Board updated on the developments in this case. (*California Faculty Association (CFA) v. PERB; California State University*, Third District Court of Appeal, Case No. C061905.) In the second matter, the Second District Court of Appeal recently issued a summary denial of the challenge brought by the American Federation of State, County and Municipal Employees, Local 575 to PERB Decision No. 1979-C. Ms. Bogert concluded that this means this litigation matter is now complete and the Board's decision remains undisturbed. (*AFSCME Local 575 v. PERB; Los Angeles County Superior Court*, Second District Court of Appeal (Division Two (Los Angeles)), Case No. B211910.)

Chief Administrative Law Judge McMonigle reported on the activities of the Division of Administrative Law. He stated that the division's caseload continues to grow. In this fiscal year (2008-2009) to date, 136 cases have been assigned for formal hearing. By fiscal year end, Mr. McMonigle anticipated that a total of 150 cases will have been assigned for formal hearing. This is compared to a total of 83 cases that were assigned in Fiscal Year 2007-2008. He continued reporting that there are six administrative law judges (ALJs) and each have eleven cases assigned for formal hearing. Cases are now being scheduled for formal hearing in late September and October. To date, 46 proposed decisions have issued and he anticipated that the total for this fiscal year would be 50-52 decisions issued. This is compared to an average of 46 decisions issued. Mr. McMonigle concluded stating that the number of days for submission of proposed decisions is in the high 90s.

Member Wesley inquired about the number of cases that settle after they are assigned to formal hearing and the fact that the ALJs also assist the parties in settlement, if possible.

Mr. McMonigle responded that approximately 40-42 percent of cases are settled after assignment to formal hearing. He explained that settlement is encouraged prior to the formal hearing, even up to the last minute before the hearing starts. Currently, the ALJs are not assisting in informal settlement conferences. However, at formal hearings held in PERB offices, the parties are afforded a mediator other than the presiding ALJ, if needed, to assist in settling the case. Where a PERB agent other than the presiding ALJ is not

available, the parties are asked on the record to agree to a waiver. This waiver enables the presiding ALJ to mediate to settle the case, but still allows them to preside over the hearing. Mr. McMonigle concluded that, in the waiver the parties are agreeing, on the record, that they were not prejudiced by the ALJ's mediating to possibly settle the case, and allows the ALJ to preside over the formal hearing, should it go forward.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported on legislation that affect matters within PERB's jurisdiction or are of interest. Mr. Chisholm stated that there continues to be very little legislative activity this year on which to report. He then reported on one bill that PERB has been following, Senate Bill 656 (DeSaulnier). SB 656 would further alter the Meyers-Milius-Brown Act with respect to PERB's jurisdiction over bargaining units that include peace officers. That bill has passed the Senate and was recently assigned to the Assembly Public Employees Retirement and Social Security Committee.

**Motion:** Motion by Member Wesley and seconded by Member McKeag that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be received.

**Ayes:** Dowdin Calvillo, McKeag, Neuwald, and Wesley.

**Motion Adopted.**

**Old Business**

None.

**New Business**

None.

**Comments From Public Participants**

Acting Chair Dowdin Calvillo called for public comment and hearing none, returned the meeting to the Members of the Board for comment and observations regarding PERB's departed Chair Tiffany Rystrom. She stated that each Board Member would sign a copy of today's meeting minutes and send them to Tiffany's partner, Angela, so that she could read how important Tiffany was to us. Each Member of the Board commented in remembrance of Chair Tiffany Rystrom as follows:

Member Sally McKeag:

It is rather devastating for the Board to lose Tiffany Rystrom and I wrote a tribute that I wanted to read for the record and acknowledge how much I really enjoyed working with Tiffany.

Getting to know Tiffany Rystrom—both professionally and personally—over the past several years has indeed been a privilege and an honor. She was an extraordinary woman who loved the simple pleasures of life, as well as the complexities of legal deliberations and debates. She possessed a generous heart but did not back away from her strong beliefs and her high standards. Tiffany was a work horse and a fighter to the very end.

Professionally, I will always remember Tiffany's relentless deliberations on a particularly difficult case of which I was author. There was something that bugged her about the case, but she could not put her finger on it. So, over the course of several weeks, Tiffany would come into our offices with a new legal theory. It was like being in a tennis match: Tiffany would serve up the legal theory du jour, and Greg Lyall, my Legal Advisor, and I would return the serve with our legal theories. I always enjoyed these deliberative sessions because, despite the serious nature of the discussions, they were always mixed with a lot of laughter and some good natured bantering. Finally, Tiffany came into our office with her hands in the air exclaiming 'I have it!' And sure enough, she did. In PERB Decision No. 1949-H, we applied the doctrine of judicial estoppel for the first time in a PERB case. Lessons learned from Tiffany: Don't give up and think outside the box.

On the personal side: I will always remember and miss Tiffany's laugh, because it was genuine and warm; I will always miss our exchange of golf experiences—which by the way, are much more exciting than the fish-that-got-away stories; and last, but not least, I will always remember her courage and her steadfast positive outlook on life despite the challenges that laid ahead.

Member Robin Wesley:

I would echo the comments of my fellow Board Members, and I would like to add that it was an honor and a pleasure to work with Tiffany. She was very passionate about the law and PERB benefited from her many years of legal experience. Tiffany clearly loved the work at PERB, and she was dedicated to excellence for herself and she challenged others in the agency to also strive for that excellence. But, most importantly, it was a pleasure to know Tiffany personally, she was friendly and enthusiastic, she was always young at heart and she will be missed by the entire PERB community.

Member Karen Neuwald:

Obviously, I echo the sentiments of my colleagues and my remarks will be a little bit longer just because I have to tell a few stories. I know that's hard to believe that I would tell a few stories about Tiffany, but that's my style and I think it serves Tiffany well as a good remembrance. We all met Tiffany in August of 2007 when she got appointed to the Board and I remember that day because when she came in, she had this spirit and exuberance and she had a

jump to her step. A lot of energy and you felt it from day one. And we could all tell how excited she was to get this appointment. She jumped in right away to get her work done as a Board Member. When we would sit down and chat about experiences and we learned that we had some experiences in common and never realized how small a world it was. Tiffany and I would talk about when she was married to Michael Franchetti, who was the Director of the Department of Finance, I had just started my government career in the Fall of 1982 and obviously Governor George Deukmejian started as the Governor in January 1983 and it was very interesting to hear Tiffany's perspective about the beginnings of a new administration, seen through her eyes and obviously the eyes of the Director of the Department of Finance, Michael Franchetti. It was a very lively time and, obviously, a lot of changes were going on. It was fascinating to hear her talk about her experiences during that time. Another time we were talking, I don't know how we got talking on the subject of some legislation I was working on at the Department of General Services related to some litigation. All of the sudden Tiffany said: "You know, I was one of the litigators on that appellate court decision that evolved into legislation." I thought, wow, it's really a small world, to think that totally unrelated to PERB, our paths could have crossed, it did cross, even though we weren't aware that we were working on the same issue.

The third time, which I actually found humorous and kind of a testimony to her loyalty and her beliefs, was one day she walked in my office and she noticed all my St. Louis Cardinals paraphernalia. She gave me this look and she chided me, she said "you know you're not rooting for the right mid-western team" —loyal to her Illinois and Chicago roots. Obviously, she was speaking about the Chicago Cubs, which will make some people in this room happy who I know are Cub loyalists. But, I think the most telling experience with Tiffany and really speaks to her love and joy about working at PERB, was how she described how working at PERB related to her appellate court experience when she was a judicial clerk right after law school. She clearly enjoyed being a judicial clerk, and she related that experience to having the honor of being a PERB Board Member and working on our legal decisions. And that I think exemplified what she thought about this job and the opportunity to have this job. Tiffany, as you know, never really complained about her cancer. She obviously was undergoing pretty severe chemo. We talked about anything we could do to help her get her work done, and also facilitate whatever she needed as she was battling cancer. She never backed down from her workload and her desire to step in. I'm going to close with words from the last email I received from Tiffany, which was a testimony to this dedication. She sent us an email that said that she "wouldn't be able to continue working as much" and so obviously I emailed her back and said "take care of yourself." Her final email was "Thanks Karen. I can't wait to get back to the action. I appreciate the support." And I think that that summarizes her well. We will miss Tiffany.

Acting Chair Alice Dowdin Calvillo:

As my colleagues have said before me, Tiffany was an extraordinary woman. I was honored to have had the opportunity to work with her for the past year or so, and I will miss her. Tiffany had such a positive outlook, both professionally and personally. I admired her for that. And she was a brilliant attorney, and although we did not always agree on our cases, I respected her opinions and appreciated her tenacity. Tiffany took her job as a PERB Board Member and as Chair very seriously—and I liked that! She often talked about the importance of her job, our job, in setting new law. Tiffany was always open to new ideas to make our operations run smoother. And to that end, we were able to streamline a few things to do just that. We were lucky to serve with Tiffany, and I thank the Governor for appointing her to PERB. She served him honorably.

General Counsel Tami Bogert:

One of my earliest interactions with Tiffany was, shortly after she was appointed to the Board, she and I decided to get out for lunch together (get to know each other a bit). We met here in the PERB lobby, made our way out the front door, and at about the same time both reached for and fumbled around in our handbags ... and ultimately—at the very same moment—pulled out and put on the exact same sunglasses.

Unbeknownst to me at that moment—although it became fairly evident during our lunch that followed—this incident would become one of multiple future incidents in which Tiffany and I would see eye-to-eye, or discover we had something in common.

Now, it wasn't all commonality. Tiffany was a self-described “morning person.” This we do not share. Even had she not described herself in this way, it quickly became obvious upon her arrival at PERB that she starts each day at the crack of dawn—as evidenced in part by her wee-hour emails—and goes full speed ahead. What she did not mention, however—though again, this too quickly became obvious—is that, in addition to being a morning person, she also was an afternoon, an evening, and a nighttime person. She was on the go—getting things done, making things happen—around the clock.

I so admire her drive and her spirit. I feel privileged to have known and worked with her; albeit far too briefly. I will proudly carry with me my Tiffany memories.

## **General Discussion**

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through August 13, 2009, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

**Motion:** Motion by Member Wesley and seconded by Member Neuwald that there being no further business, the meeting be recessed to continuous closed session.

**Ayes:** Dowdin Calvillo, McKeag, Neuwald, and Wesley.

**Motion Adopted.**

Respectfully submitted,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Alice Dowdin Calvillo, Acting Chair